

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Gary Thelen and Thomas Thelen,

Plaintiffs,

v.

City of Elba, et al.,

Defendants.

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Case No.: 08-cv-1150 (JNE/JJG)

**ORDER**

The above-entitled matter came before the Court upon the Report and Recommendation of the United States Magistrate Judge. No objections have been filed to that Report and Recommendation in the time period permitted.

Based upon the Report and Recommendation of the Magistrate Judge, and all the files, records and proceedings herein,

**IT IS HEREBY ORDERED THAT:**

- I. The motion to dismiss by Defendants Betty Jo Rico, Wayne Ehlenfeldt, Scott Scherbring, Scott Jensen, and Rebecca Prebe (Doc. No. 3) is **DENIED**.
- II. Plaintiffs are granted 21 days after the filing date of this Order to cure their deficient service of Defendant Wayne Mehrkens.
- III. Plaintiffs shall file proof of service of Defendant Wayne Mehrkens within 21 days after the filing date of this Order. If they fail to do so, the Court will grant Defendant Wayne Mehrkens' motion to dismiss (Doc. No. 9)

and dismiss this action without prejudice as to Defendant Wayne Mehrkens.

Dated: January 28, 2009

s/ Joan N. Ericksen  
JOAN N. ERICKSEN  
Judge, United States District Court